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Stephen L. Vagnini
Monterey County Recorder

CRROBERTA
9/17/2003
8:00:00

Recorded at the request of

Stewart Title

RECORDING REQUESTED BY:

U. S. **Army** Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325J Street

DOCUMENT: **2003113179**



Titles: 1/ Pages: 41

Fees....

Taxes...

Other... _____

AMT PAID

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
880 Cal Center Drive
ATTN: Anthony J. Landis, **P.E.**
Chief of Northern California Operations
Office of Military Facilities
Sacramento, CA **95826**

(Space Above This Line For Recorder's Use **Only**)

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Re: A Portion of the ~~former~~ Fort Ord installation lies within a "Groundwater Protection Zone" as defined by Monterey County Ordinance **04011** (Exhibit "A"). Use of groundwater is prohibited on the Property described below and shown on Exhibit "B".

This Covenant, and Agreement ("Covenant") is made by and among The United States of America acting by and through the United States **Army** (also referred to herein as the "Covenantor"), the current owner of the herein described real property located in the County of Monterey, State of California, shown on Exhibit "B" and described in Exhibit "C", attached hereto and incorporated herein by **this** reference (the "Property"), the State of California acting by and through the Department of Toxic Substances Control ("Department"), and the Central Coast Regional Water Quality Control Board (Regional Water Board).

The Department and the Regional Water Board **also** wish **to** expedite the transfer of this property to the Fort Ord Reuse Authority (**FORA**) / California State University Monterey Bay (CSUMB),

University of California Monterey Bay Education, Science & Technology Center (UCMBEST), Monterey College of Law, and Federal Highway Administration (FHWA), pursuant to the requirements of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" 42 USCA Section 9601 et seq.), Section 120(h). All of the Fort Ord facility is subject to the requirements of CERCLA. FORA intends to transfer the parcels it receives that are listed in this Covenant to the Marina Coast Water District (MCWD). FHWA intends to transfer the parcels it receives that are listed in this Covenant to Monterey-Salinas Transit (MST) and will not hold title to the property.

Pursuant to California Civil Code Section 1471(c), the Department and the Regional Water Board have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials, as defined in the California Health and Safety Code ("H&SC") Section 25260(d), in the groundwater and the soil, and to protect waters of the state in accordance with California Water Code Division 7.

The United States Army (Army) intends to transfer the Property to FORA, CSUMB, UCMBEST, Monterey College of Law, and FHWA. As a part of that transfer, the Covenantor will impose separate deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant.

The Covenantor, the Department and the Regional Water Board, collectively referred to as the "Parties" hereby agree that the use of the Property will be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 127 acres, is more particularly depicted in Exhibit "B" and described in Exhibit "C". The Property is located on the former Fort Ord, California and is summarized in the table below.

Parcel Number	Acres	Name on Legal Description in Exhibit C	Recipient	Intended Reuse
F7.2	1.223	Parcel 2 (Well Site No. 31) ¹	UCMBEST	Water Well 31 (C)
L1.1	3.196	3.196 Acre Parcel (L1.1)	Monterey College of Law	Education
L2.2.1	2.11	Parcel 1 (2.11 ac.) ²	FHWA (MST)	Park and Ride I
L32.2.1	23.77	Parcel 11 A (23.77 acres)	CSUMB	Campus addition
L32.2.2	9.79	Parcel 11 B (9.79 acres)	CSUMB	Campus addition
L32.3	3.7195	Parcel 12A	CSUMB	Campus addition
L33.1	48.297	48.297 Acre Remainder of Parcel 6	CSUMB	Campus addition
L33.2	12.98	Also excepting therefrom a 12.98 acre parcel ³	CSUMB	Campus addition
L35.1	10.553	Corporation Yard	FORA (MCWD)	Corporation yard
L35.2	1.717	Future Water Tank	FORA (MCWD)	Future water tank
L35.3	0.103	Travel Camp Pump	FORA (MCWD)	Travel camp pump
L35.6	0.129	Skeet Field Tank	FORA (MCWD)	Water storage tank
L35.7	0.097	Lift Station #96	FORA (MCWD)	Sewage lift station #96
L35.8	0.138	Lift Station #31	FORA (MCWD)	Sewage lift station #31
S1.3.3	9.26	Parcel 7 (9.26 AC.)	CSUMB	ROW/Intergarrison Road
S1.5.1.2	11.705	Parcel 5C (S1.5.1.2) (11.075 Acres)	CSUMB	Maintenance area
S2.1.4.2	3.616	Parcel S2.1.4.2 (Site 34B) ⁴	UCMBEST	Education

1.02 The Covenantor **has** conducted a remedial action to remove contaminated soil and substances at the Property under **the** supervision and authority of the Department, the Regional Water Board and the United States Environmental Protection Agency (U.S. EPA). The remaining contamination of the Property **is** in the underlying groundwater. This groundwater

¹ This legal description includes parcel 7.1, also **known** as Parcel 1 (Well Site No. 30), which was transferred to **FORA** on October 26, 2001 and is not a Track 0 parcel.

² This legal description includes parcel L2.2.2, also known as Parcel 2 (**4.54** ac.), which will be transferred to Monterey-Salinas Transit as part of the Track 1 FOST.

³ The boundaries of parcel L33.2 are contained within parcel L33.1, which is demonstrated in an attachment to the legal description. As such, the boundaries of L33.2 are described as an exception from the area of L33.1 in the legal description for both parcels.

⁴ In the map attached to the legal description of this parcel, the parcel is labeled "Remnant Parcel to be held by US Army for Remedial Action." This map is dated October 1996. Since that time remedial action has been completed and the parcel is suitable for transfer.

exists in two aquifers, the "A", the uppermost aquifer, and the "180-foot" aquifer, which is directly beneath the "A" aquifer. These aquifers are separated by a clay layer in some areas, and are contiguous in other areas. Groundwater in these aquifers is contaminated with volatile organic compounds (VOCs), primarily trichloroethene (TCE), associated with Operable Unit 2 (OU2) and Remedial Investigation (RI) Sites 2 and 12. OU2 is the former Fort Ord Landfill located east of 6th Avenue and south of Imjin Road. RI Sites 2 and 12 are located immediately southeast of the 12th Street Gate. Pursuant to the Fort Ord Federal Facility Agreement, signed by the Parties in 1990 in which the Army agreed to complete the cleanup at Fort Ord, a Record of Decision (ROD) for OU2 was signed on August 23, 1994. The ROD for RI Sites 2 and 12 (Record of Decision, Basewide Remedial Investigation Sites) was signed on January 17, 1997. The contaminant plumes underlying the Property are undergoing extraction and treatment pursuant to the RODs. A separate area of groundwater, contaminated with carbon tetrachloride, was recently discovered in both the "A" and "180-foot" aquifers. The carbon tetrachloride plume was discovered in summer 2000. Additional monitoring wells to further define the plume limits are planned. The Army, the Department, the Regional Water Board and U.S. EPA will sign a ROD documenting the decision on remedial action. Monterey County has enacted an ordinance that prohibits pumping and use of the groundwater in this area. (Attached as Exhibit "A"). The "Groundwater Protection Zone", as defined in that ordinance is also used herein.

1.03 The groundwater underlying the Property is contaminated with VOCs, primarily TCE, as shown below in paragraph 1.04, associated with OU2 and RI Sites 2 and 12. This compound exists at concentrations exceeding the Aquifer Cleanup Levels (ACLs) presented in the Operable Unit 2 and the Basewide Remedial Investigation Sites RODs. The ACLs in these RODs were set at or below both State and Federal Maximum Contamination Levels (MCLs), found in both 40 CFR Part 141 and/or Title 22 California Code of Regulations (CCR) Section 64444. The ACL for the carbon tetrachloride plume has not been established.

1.04 The maximum estimated concentration of TCE in the groundwater beneath the Property is 13 ug/L (Parcel E2b.2.1). The concentrations of chemicals of concern frequently detected in the groundwater plume associated with the OU2 and RI Sites 2 and 12, as of September 2001, are listed in the table below; the quantity released of these compounds is unknown. No carbon tetrachloride was detected in monitoring wells on the Property.

Chemical Name	Regulatory Synonym	Estimated Maximum Concentrations(ug/L)	ACL
Benzene	Benzol	ND	1.0
Carbon Tetrachloride	Methane, tetrchloro-	ND	0.5
Chloroform	Methane, trichloro-	0.98	2.0
1,1-Dichloroethane	Ethane, 1,1-dichloro-	2.0	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro-	0.14	0.5
1,1-Dichloroethene	Ethene, 1,1-dichloro-	3.3	6.0
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	5.6	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro-	0.49	1.0
Total 1,3-Dichloropropene	Propene, 1,3-dichloro-	ND	0.5
Methylene Chloride	Methane, dichloro-	ND	5.0
Tetrachloroethene	Ethene, tetrachloro-	0.87	3.0
Trichloroethene	Ethene, trichloro-	13.0	5.0
Vinyl Chloride	Ethene, chloro-	ND	0.1

1.05 Pump-and-treat groundwater remediation systems located near the corner of 12th Street and 3rd Avenue (for OU2) and near the corner of 1st Avenue and 12th Street (for RI Sites 2 and 12) are in place and shown to be operating effectively. Both systems extract water **from** the contaminated “A” aquifer and the “180-foot” aquifer, remove contaminants by means of granular activated carbon (adsorption), and inject the treated water back into either the “A” or “180-foot” aquifers (recharge). Locations of extraction, injection and monitoring wells are shown in Exhibit “B”. The **Army has** received concurrence from the U.S. EPA **that** the pump-and-treat system for remediation of the OU2 groundwater plume and the RI Sites 2 **and** 12 groundwater plume, are in place and operating “properly and successfully”, (**4 January 1996** and 3 July 2002, respectively). Since 1996, additional groundwater contamination has been discovered in the “A” and “180-foot” aquifers associated with OU2, which the existing pump-and-treat system was not able to capture and treat. The Army designed and constructed **an** expansion to the existing OU2 pump-and-treat system. The Parties believe this expansion will successfully capture and **treat** the additional contamination. As stated in 1.02 above, the remedial action for the carbon tetrachloride plume has not yet been determined by the Army, the Department, the Regional Water Board and U.S. EPA.

ARTICLE II

DEFINITIONS

- 2.01 Deuartment. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.
- 2.02 Regional Water Board. "Regional Water Board" means the California Regional Water ~~Quality~~ Control Board, Central Coast Region, and includes its successor agencies, if any.
- 2.03 Water Agency. "Water Agency" means the Monterey County Water Resources Agency.
- 2.04 Health Department. "Health Department" means the Monterey County Environmental Health Department.
- 2.05 Covenantor. "Covenantor" means the United States of America acting through the United States Army".
- 2.06 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, **who** at any time hold title to all or any portion of the Property,
- 2.07 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

- 3.01 Restrictions to Run with The Land. **This** Covenant sets forth protective provisions, covenants, restrictions, **and** conditions (collectively referred to **as** "Restrictions"), subject to which the Property and relevant portions shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) **runs** with the land pursuant to Health and Safety Code Sections 25222.1, and **25355.5(a)(1)(c)**, and Civil Code Section 1471; (b) inures to the benefit of the Department and the Regional Water Board and passes with each and every relevant portion of Property; (c) is for the benefit of and is enforceable by, the Department and the Regional Water Board; and (d) is imposed upon the entire Property unless expressly stated **as** applicable only to a specific portion thereof.
- 3.02 Binding upon Owners/Occupants. Pursuant to Health and **Safety** Code Sections 25222.1 and **25355.5(a)(1)(C)** and Civil Code Section 1471, this Covenant binds all Owners and

Occupants of the Property, and their heirs, successors, and assignees, and agents, employees, and lessees. Pursuant to Civil Code Section 1471(b), all successive owners and occupants of the Property are expressly bound hereby for the benefit of the Department and the Regional Water Board.

3.03 Written Notice of Release of Hazardous Materials. Prior to the sale, lease, or sublease of the Property, of any portion thereof, or the execution of a license or easement on the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous materials are located beneath the Property **as** required by Health and Safety Code Section 25359.7.

3.04 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases, for any portion of the Property.

3.05 Conveyance of Property. The Owner shall notify the Department, the Regional Water Board, the Water Agency, and the Health Department not later ~~than~~ thirty (30) days after executing any document conveying any ownership interest in the Property (excluding short-term rentals and leases, mortgages, liens, and other non-possessory encumbrances). None of the above agencies shall have, by reason of this Covenant, authority to approve, disapprove, or otherwise affect any proposed conveyance, except **as** otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Activities. The following activities are prohibited on the Property without the prior review and written approval **of the** Covenantor, the Department, and the Regional Water Board:

- (a) Construction of groundwater wells for injection or extraction and utilization, and
- (b) Any other activity on the Property that would interfere with or adversely affect the groundwater remediation system on the Property or result in the creation **of** a groundwater recharge area (e.g., unlined surface impoundments or disposal trenches). Normal landscaping and irrigation activities within the Property including routine irrigation practices are not prohibited activities.

4.02 Notification of Discovery of Activities Affecting Groundwater Svstems. The Owner or Occupant shall notify the Department, the Regional Water **Board**, the Water Agency, the Health Department, U.S. EPA, and the Covenantor of the discovery of any activities conducted by the

Owner or Occupant interfering with or adversely affecting any groundwater extraction, treatment, or monitoring installation for the Property. The Owner or Occupant shall provide the notification in accordance with Section 7.04 within seven (7) working days after the discovery of the activity and shall include information regarding the type of activity, date of the activity, and location of the activity on the Property.

4.03 Access. The Department, the Regional Water Board, **U.S.EPA**, and the Covenantor, its contractors and agents shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling, installation and monitoring of remedial systems, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department, the Regional Water Board, **U.S. EPA**, and the Covenantor in order to protect the public health and safety or the environment and oversee any required activities.

ARTICLE V

ENFORCEMENT

5.01 **Enforcement.** Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department or the Regional Water Board to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, water wells, and surface impoundments constructed or placed upon any portion of the Property in violation of the Restrictions). Violation of this Covenant shall be grounds for the Department or the Regional Water Board to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 **Variance.** Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233. The Department shall receive the concurrence of the Regional Water Board before any such variance is effective.

6.02 **Termination.** Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234. The Department shall receive the concurrence of the Regional Water Board before any such termination

is effective.

6.03 Term. Unless ended in accordance with the termination paragraph above, by law, or by the Department and the Regional Water Board in the exercise of their discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California, the Department, and the Regional Water Board include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original and prior to transfer of the Property **from** the Army to another owner.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Garrison Commander
ATTN: ATZP-GC
Presidio of Monterey, CA 93944-3223

To Department: Mr. Anthony J. Landis, P.E.
Chief of Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

To Regional Water Board: Mr. Roger Briggs
Executive Officer
California Regional Water Quality Control Board,
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

To U.S. EPA: Ms. Deborah Jordan
Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, CA 94105-3901

To Water Agency: Mr. Curtis Weeks
Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901

To Health Department: Mr. Allen Stroh
Monterey County Environmental Health
1270 Natividad Road
Salinas, CA 94948.

Any **party** may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any provision of this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect **as** if such portion found invalid had not been included herein.

7.06 Attachments. All attachments referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of **any** of the provisions of this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

7.09 Representative Authority. The undersigned representative of each party to this Covenant

certifies that he or she **is** fully authorized to enter into the terms and conditions of this Covenant **and** to execute **and** legally bind that **party** to this Covenant.

{Signatures follow}

September, 2003.

Joseph W. Wtaker

ACKNOWLEDGMENT

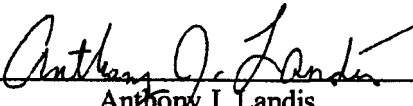
COUNTY OF ARLINGTON

acknowledges the **same** for and on behalf of **the** UNITED STATES OF AMERICA.

Karen A. Cooper
NOTARY PUBLIC/

IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
STATE OF CALIFORNIA has caused these presents to be executed on this 18th day of
August, 2003.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



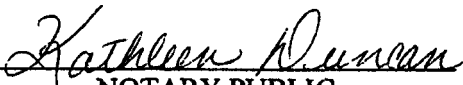
Anthony J. Landis
Chief of Northern California Operations
Office of Military Facilities

ACKNOWLEDGMENT

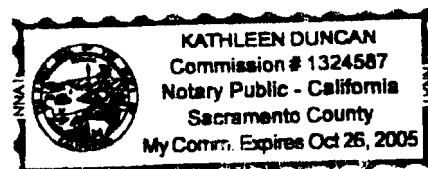
STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

I, the undersigned, a ~~Notary~~ Public in ~~an~~ and for the State of California, ~~County~~ of Sacramento, whose commission as such expires on the 26th day of October, 2003, do hereby ~~certify that~~ on this day ~~personally~~ appeared ~~before~~ me in the said State of ~~California~~, ~~County~~ of Sacramento, Anthony J. Landis, Chief of Northern California Operations, Office of ~~Military~~ Facilities, whose name is signed to the foregoing document dated the 18th day of August, 2003, and acknowledges the same for ~~and on behalf of the~~ Department of ~~Toxic~~ Substances Control.

Given under my hand this 8th day of August, 2003.

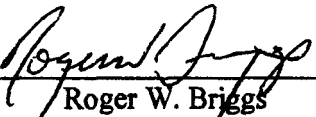


NOTARY PUBLIC



IN WITNESS WHEREOF, the **CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD, STATE OF CALIFORNIA** has caused these presents to be executed on this 1st day of August, 2003.

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD



Roger W. Briggs
California Environmental Protection Agency
Executive Officer
California Regional Water Quality Control Board, Central Coast

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN LUIS OBISPO)

I, the undersigned, a Notary **Public** in and for the State of **California**, **County** of **San Luis** Obispo, whose commission as such expires on the 22 day of March, 2007⁶, do hereby **certify** that on this day **personally** appeared **before** me in the said State of **California**, **County** of **San Luis Obispo**, Roger W. Briggs, Executive Officer, **whose** name is signed to the foregoing document dated the 1 day of Aug., 2003, and **acknowledges** the same for and on behalf of the Department of Toxic Substances Control.

Given under ~~my~~ hand this 1 day of Aug, 2003.



NOTARY PUBLIC

